

11-5-1990



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Joa Quin Mfg. Corp.
File: B-239678
Date: September 12, 1990

D. Barqas for the protester.
Herbert F. Kelley, Jr., Esq., and Scott A. Ford, Department
of the Army, for the agency.
Robert A. Spiegel, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Small disadvantaged business (SDB) is not entitled to
preference where solicitation expressly deletes clause
providing for SDB preference.

DECISION

Joa Quin Mfg. Corp. protests the award to Safety Storage,
Inc., under invitation for bids (IFB) No. DAHA20-90-B-0002,
issued as a total small business set-aside by the National
Guard Bureau, Departments of the Army and the Air Force,
Lansing, Michigan, for two hazardous waste containers. Joa
Quin contends that the National Guard erred by failing to
give an evaluation preference to small disadvantaged
business (SDB) concerns.

We deny the protest.

Nine bids were received by the closing date of April 9,
1990, and on May 3 award was made to the lowest responsible
bidder, Safety Storage, Inc.

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The protester, who was the forth-low bidder, asserts that had the agency given preference to SDB's, it would have been the lowest responsive, responsible bidder. Joa Quin bases its claim on the inclusion of the following provision in the representations and certifications of the IFB:

"K-23 NOTICE OF EVALUATION PREFERENCE FOR SMALL
DISADVANTAGED BUSINESS (SDB) CONCERNS

"The following information is required to comply with Contract Clause DFARS 252.219-7007 if applicable (See Section I).

"☐ By checking this block the SDB Offeror requests that this evaluation preference as described in contract clause 252.219-7007 not be given to this offer."

The clause at Defense Federal Acquisition Regulations Supplement (DFARS) § 252.219.7007 (DAC 88-14), which provides for an SDB preference, was included in the IFB package but was then expressly deleted by § I-75 of the IFB. Since, by its own terms, the SDB representation is only applicable if DFARS § 252.219-7007 is included in the contract, the only reasonable interpretation of the IFB is that the SDB preference is not applicable.^{1/} Thus, the protester had no entitlement to such a preference. See W.M. Marable, Inc., B-234987 et al., May 3, 1989, 89-1 CPD ¶ 425.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} DFARS § 219.7001(a) (DAC 88-14) provides that no SDB preference will be applied in the event of a total small business set-aside, as is the case here.